

A letter from East-Timor

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A letter from East-Timor

Unnoticed by the larger public, the Special Panels of the Dili District Court in East Timor ended their work on 20 May 2005. Over a period of five years these chambers have tried 87 defendants in 55 cases for their involvement in the atrocities that were committed around the referendum on independence of 30 August 1999.

It is now a year ago that I had the opportunity to visit this internationalized tribunal. What I found in Dili was a court that was underfunded, did not have the support of qualified interpreters, did not have a good library and was not noticed at all by the local people. It is sad to say, but I was not impressed by the expertise in international criminal and humanitarian law of the majority of judges, the prosecutors as well as of defence counsel. At hearings, there was a lot of confusion about what witnesses or accused had said in one of the fifteen Timorese languages and how it was translated by the interpreters in Portuguese and English. The chambers, consisting of three judges, one Timorese and two others, did not always have a common fluent language. The Coordinating Judge, a president was never nominated, was in charge of organizing plenary sessions of the judges as well as ordering toilet paper or looking after electricity whenever there was one of the regular break downs of electricity.

It may be strange for a lawyer, but these practical constraints also come into my mind when thinking of the legacy of the East Timor Special Panels. What is then its legacy? For those who are familiar to the case law of the Yugoslav Tribunal or the Rwanda Tribunal it is striking to see how little analysis is made of the legal arguments in a given case. Most decisions, even the judgements, are rather short and contain not more than 10 pages, and the reproduction of the facts has not been given much attention. One could justifiably be quite critical about the quality of its case law in comparison to the other two tribunals mentioned. However, the case law of the East Timor tribunal is also an example of how a state and the international community deal with atrocities in the past.

My criticism is less with the outcome of the work of the tribunal than with the circumstances and constraints under which it had to work. The judges did not have any support of legal assistants, did not have reliable access to internet and shared working rooms at the court. The political support of the tribunal in East Timor was fading away. Under those circumstances one cannot judge the Dili courts on the same standards as the ICTY and ICTR.

Formally, the cases pending before the Panels are handed over to the full competence of the East Timorese authorities. There is no formal amnesty, but it is likely that there will be a de facto one. The whole country only has a dozen of judges for all cases (also non criminal). The country will simply be unable to continue to try the atrocities of 1999. More than five years later, there are other, more urgent needs: housing, education, rebuilding the infrastructure, combating poverty and creation of jobs. The continuation of prosecutions competes with these needs for funding in a country that is one of the poorest in the world.

My visit to Timor changed my mind about the usefulness and necessity of these kind of tribunals in the sense that I do not think that every situation or country should have its own tribunal court dealing with the dark pages of the past. Sometimes other solutions, especially non legal solutions can have better results for the local people. That will differ from country to country. One may seriously question whether it makes sense to indict people on the basis of notions of guilt and mens rea which are far away from the legal culture in which the accused committed his behaviour. Cultural-anthropological research is much more needed here than blind prosecution.

If the international community sets up a tribunal of whatever kind it should be given the appropriate infrastructure to give those accused a fair trial. If there is insufficient support for a criminal tribunal, it might be better not to establish one. If not, one is left with the idea that there are different levels of criminal justice: one for Yugoslavia and one for Timor, one for Rwanda and one for Sierra Leone.

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